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PARKER'S ELECTION MANUALS.

A
MANUAL

FOR THE

COUNTING ASSISTANT

AND

COUNTING AGENT

AT

ALL ELECTIONS HELD UNDER
THE BALLOT ACT, 1872.

BY

FRANK R. PARKER,

EDITOR AND PARLIAMENTARY AGENT.

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LONDON :

KNIGHT & CO., 90, FLEET STREET, E.C.

1892.

PARKER'S ELECTION MANUALS.

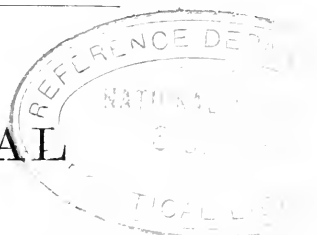
BY THE SAME AUTHOR.

- A MANUAL FOR THE PRESIDING OFFICER and POLL CLERK at all Elections held under the Ballot Act, 1872.
- A MANUAL FOR THE POLLING AGENT at all Elections held under the Ballot Act, 1872.
- A MANUAL FOR THE VOLUNTEER ASSISTANT at all Elections held under the Corrupt Practices Acts.
- A MANUAL FOR RETURNING OFFICERS and DEPUTY RETURNING OFFICERS at the First Election of County Councillors in January, 1889.
- THE POWERS, DUTIES AND LIABILITIES of an ELECTION AGENT and of a RETURNING OFFICER at a Parliamentary Election in England or Wales. *Second Edition.*
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- AN ANALYSIS AND INDEX TO THE BANKRUPTCY ACT, 1869.

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A MANUAL

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FRANK R. PARKER,

SOLICITOR AND PARLIAMENTARY AGENT.

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P R E F A C E.

THIS Manual consists of extracts, with additions, from my two works, 'The Election Agent and Returning Officer,' and 'The Election of County Councils,' and is written for the especial use of Counting Assistants and Counting Agents. It is not so concise as the 'Instructions for Counting Assistants, and Chief Counting Assistant,' in the former work, and in the Appendix to this Manual: it is as full as either work upon the subject with which it deals; and it is more comprehensive than either in that it includes other elections than those to which such works are confined.

It is published at as low a price as possible, so as to be available for the numerous counting assistants and counting agents whom returning officers and election agents (or candidates) are compelled to engage at a contested election; and thus to aid in ensuring uniformity of procedure and in diminishing the trouble of lengthy discussions and instructions.

Such decisions as have been reported since the second editions of my two above-mentioned works were pub-

lished have been incorporated into this Manual, with such further points as have since then come under my notice.

The statutes and decisions relied upon have been retained, as a lawyer is always expected to quote his authority. These can be disregarded by the lay reader, but may be useful to the professional reader. Where no authority is cited, I am alone responsible for the opinion or conclusion expressed, and greater caution is thus desirable in acting on such passages than on those which have authority to justify them.

I have endeavoured to express myself in clear language, free from technicalities, so as to make this Manual comprehensible by all, and I trust it may prove a safe and useful guide to those for whose use it is designed.

F. R. P.

12, NEW COURT, CAREY STREET.

May, 1892.

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ABBREVIATIONS.

- B. A. . . . The Ballot Act, 1872 (35 & 36 Vict. c. 33).
C. I. P. P. A. . The Corrupt and Illegal Practices Prevention
Act, 1883 (46 & 47 Vict. c. 51).
L. G. A. . . . The Local Government Act, 1888 (51 & 52 Vict.
c. 41).
M. C. A. . . . The Municipal Corporations Act, 1882 (45 &
46 Vict. c. 50).
M. E. C. I. P. A. The Municipal Elections (Corrupt and Illegal
Practices) Act, 1884 (47 & 48 Vict. c. 70).

For other abbreviations, see the Tables of Abbreviations in
‘The Election Agent and Returning Officer’ and ‘The Election
of County Councils.’

A MANUAL

FOR THE

COUNTING ASSISTANT AND COUNTING AGENT.

PART I.

PARLIAMENTARY ELECTIONS.

CHAPTER I.

THE COUNTING ASSISTANT AND COUNTING AGENT.

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The counting assistant and the counting agent are officers constituted by the B. A. The counting assistant

CHAP. I.

is a person appointed by the returning officer to assist him in counting the votes (B. A. r. 48); the counting agent is a person appointed by the candidate or election agent to attend on the candidate's behalf at the counting of the votes (*ib.* r. 31).

QUALIFI-
CATION.Counting
assistant.

The only qualification required in a counting assistant is that he shall be "competent," *i.e.*, competent to assist the returning officer in counting the votes (B. A. r. 48). He must not be employed by any other person in or about the election (*ib.* r. 49), but there seems to be no objection to appointing an elector, or a minor if he be "competent." The counting assistant should be resident in the neighbourhood of the place of counting, or if the returning officer be unable to obtain a person so resident, he should appoint him from the next nearest or most accessible place; for if the returning officer unnecessarily bring his counting assistants from a distance, their travelling expenses may be wholly or partly disallowed, and he may have to pay the sums disallowed out of his own pocket (see *re Cumberland Elections*, 30 Solicitors' Journal, 749, 755, 772).

Counting
agent.

Any competent person, whether an elector or not, may be appointed as the candidate's counting agent, provided he be not the returning officer, his deputy, any partner or clerk of either of them (30 & 31 Vict. c. 102, s. 50), any officer appointed by the returning officer, the partner or clerk of such officer (B. A. s. 11), or any person who, within seven years, has been found or reported guilty of any corrupt practice by election judges or commissioners (31 & 32 Vict. c. 125, s. 44).

APPOINT-
MENT.Counting
assistant.

A verbal appointment by the returning officer of a counting assistant is apparently sufficient (see *R. v. Garvey*, 16 Cox C. C. 252), but a written appointment is usual and should always be obtained.

Form.

The following is a form of appointment :—

COUNTY [OR BOROUGH OR DIVISION] OF

CHAP. I.

PARLIAMENTARY ELECTION,

189 .

I do hereby appoint *T. T.*, of _____, to act as counting assistant, and to attend at _____ for the purpose of assisting me in counting the votes at the said election.

Dated this _____ day of _____ 189 .

Y. Z.

Sheriff [*or* Mayor] and Returning Officer.

I accept the above appointment,

(Signed)

T. T.

[*The declaration of secrecy, post, p. 10, may usefully be printed on the fly-leaf of this form.*]

The candidate's agents to attend at the counting of the votes (B. A. s. 2 ; r. 31), were formerly appointed by the candidate (see B. A. r. 52), and may still be appointed by him, if they act gratuitously. But if they are employed for payment, they must be appointed by the election agent, by himself or his sub-agent (C. I. P. P. A. s. 27, sub. 1) ; and, in that case, the persons appointed to this office must be chosen from among the election agent, sub-agents, polling agents, clerks and messengers (see *ib.* s. 17, sub. 1), as the C. I. P. P. A. does not recognise the paid counting agent as a distinct paid official, or in any way mention or allude to him.

Counting Agent.

The appointment must be made one clear day at the least before the opening of the poll (see B. A. r. 52), and should be in writing, and may be combined with the notice to the returning officer mentioned, *passim*. A "clear" day is a day reckoned exclusively both of the first and last days (*Liffin v. Pitcher*, 1 Dowl. N. S. 767) ; thus, one clear day before Wednesday is Monday.

How and when made.

One clear day at the least before the opening of the poll, the name and address of every agent of a candidate

Notice to returning officer.

CHAP. I. appointed to attend at the counting of the votes shall be transmitted to the returning officer, and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid (B. A. r. 52). This notice is combined with the notice of the polling agent in the following form, on the assumption that one paid individual will be appointed to fill both offices; if any other paid officer is appointed to act as counting agent, or any volunteer, the form can be altered accordingly.

COUNTY [OR BOROUGH OR DIVISION] OF

PARLIAMENTARY ELECTION,

189 .

TAKE NOTICE that I, *G. H.*, of , the election agent [or that I, *M. N.*, a sub-agent, acting in Polling District, of *G. H.*, the election agent] of *A. B.*, Esq., a candidate at the above election, do hereby nominate and appoint *R. S.*, of , to be a polling agent on behalf of the said *A. B.*, to attend at Polling Station, No. , in Polling District, No. , for the purpose of detecting personation, and also to attend as an agent of the said *A. B.* at the counting of the votes.

Dated this day of 189 .

(Signed) *G. H.*

I accept the above appointment,

(Signed) *R. S.*

To the Sheriff [or Mayor] and Returning Officer for the above election, and to the presiding officer at the above polling station.

NOTE.—The agent will only be admitted to the polling station on production, and to the counting hall on delivery up, of this appointment with the annexed declaration duly signed.

NUMBER.

Counting
assistants.

There is no limit upon the number of counting assistants, whom the returning officer may appoint, further than that the total number must only be such as

may be necessary for effectually doing the work (B. A. s. 8); but the returning officer cannot charge the candidates with a greater number than six, where the total number of registered electors does not exceed 3,000, and one for every additional 2,000 electors (38 & 39 Vict. c. 84, s. 2, and sch. I.). Thus in a constituency of from 1 to 3,000 electors, he may appoint 6 assistants

„ 3,001	„ 5,000	„	„	7	„
„ 5,001	„ 7,000	„	„	8	„

and so on.

The appointment may be in the following form :—

COUNTY [OR BOROUGH OR DIVISION] OF _____ .
 PARLIAMENTARY ELECTION, 189 .

I do hereby appoint *T. T.*, of _____, to act as counting assistant, and to attend at _____ for the purpose of assisting me in counting the votes at the said election.

Dated this _____ day of _____ 189 .

Y. Z.

Sheriff [*or* Mayor] and Returning Officer.

I accept the above appointment,

(Signed) *T. T.*

The only limit to the number of the paid counting agents that may be employed, is the limit placed upon the number of paid officers (election agent, sub-agents, polling agents, clerks, and messengers) allowed to be appointed, and from amongst whom these counting agents must be selected (see *ante*, p. 3). There is no limit upon the number of counting agents that may be appointed to act gratuitously; but, whether paid or unpaid, they should not be so numerous as to produce confusion in the carrying out of their duties. The returning officer is not bound to admit more than a reasonable number to the counting hall; what is a reasonable

Counting agents.

CHAP. I.

number must be determined by him upon due consideration of all the circumstances of the particular case.

REMUNERATION.

Counting assistant.

Each counting assistant is entitled to a fee of one guinea, and in an election for a county, or a district borough, or for Monmouth, to travelling expenses at not exceeding one shilling per mile where the distance exceeds two miles from such person's residence (38 & 39 Vict. c. 84, sch. I.).

Travelling expenses.

This allowance for travelling expenses may apparently be made for the actual distance travelled from the assistant's residence to the counting hall, and thence back to such residence; though, according to one county court judge, an assistant is only entitled to be paid mileage *from* his residence to the counting hall, and not *back* to his residence (*re Cumberland Elections*, 30 Solicitors' Journal, 749, 755, 772). Travelling expenses are not to be allowed in the case of any person unless for distances exceeding two miles from the place at which he resides (38 & 39 Vict. c. 84, sch. I. part I. note). The full maximum allowance of one shilling per mile is not to be allowed, unless the sums actually and necessarily paid or payable amount to or exceed that allowance (*South-east Essex*, Nov. 1886); and the allowance seems to be confined to travelling expenses strictly so called (*e.g.* railway and cab fares, horse hire, etc.), and does not authorize the inclusion therewith of the person's hotel expenses (*ib.*). There is no allowance for travelling expenses in a borough election, other than a district borough or Monmouth.

Refreshment.

Refreshment is but another form of payment (*Barrow-in-Furness*, 4 O'M. & H. 78), and, therefore, if given in addition to the above fee and expenses, the returning officer cannot charge same against the candidates.

Counting agent.

The remuneration of a paid counting agent must be included in that given to him as election agent,

sub-agent, polling agent, clerk or messenger, as the C. I. P. P. A. does not authorize any separate payment or fee to any person in that capacity alone, or recognise the counting agent as a distinct paid official (see C. I. P. P. A. s. 17, sub. 1, and sch. I. pt. I.).

The duties of the counting assistant are to assist the returning officer in counting the votes (B. A. s. 48), and these duties are discussed more fully hereafter.

The duties of the counting agent are to watch the counting of the votes, to see that the returning officer and his staff properly perform their duties, to object to every objectionable ballot paper given for an opposing candidate, and to defend every ballot paper given for his own candidate that may be objected to (see *post*, p. 16, *et. seq.*). He is also bound to maintain and to aid in maintaining the secrecy of the voting, and shall not attempt to ascertain, at the counting of the votes, the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper, under penalty of imprisonment (B. A. s. 4).

Inasmuch as the poll is over before the duties of the counting assistant begin, there is no objection to his voting.

A paid counting agent may not vote (C. I. P. P. A. sch. I. pt. I. cl. 7), either in his own county, borough, or division (*ib.*), or in any other division of a divided borough (48 & 49 Vict. c. 23, s. 15). If nevertheless he does vote, he is guilty of an illegal practice (C. I. P. P. A. s. 9), and of a misdemeanour (30 & 31 Vict. c. 102, s. 11). If he votes, one vote will be struck off the number of votes given for his candidate (B. A. s. 25). The illegal practice entails severe punishment to the counting agent (see Election Agent, p. 472), and may invalidate his candidate's election (C. I. P. P. A. s. 11), but in a

CHAP. I.

DUTIES
STATED
GENER-
ALLY.

Counting
assistant.

Counting
agent.

RIGHT TO
VOTE.

Counting
assistant.

Counting
agent.

CHAP. I.

proper case the candidate may obtain relief against the illegal practice (*ib.* s. 22). An unpaid counting agent is not disqualified from voting, and is guilty of no offence if he does vote.

LIABILITIES.

Counting
assistant.

The counting assistant, if he commit any breach of duty whereby the candidate has lost the election, is liable to an action at the suit of the party aggrieved (see *Pickering v. James*, L. R. 8 C. P. 489; *acc. Thornbury*, 16 Q. B. D. 752), though not for a mere mistake on a point of law (see cases cited, 'Election Agent,' pp. 50, 51). He is also liable to a penalty of not exceeding £100 for any wilful misfeasance, or any wilful act or omission, in contravention of the B. A. and C. I. P. P. A. (B. A. s. 11; C. I. P. P. A. s. 61, sub. 1). He is guilty of misdemeanour, and is liable to imprisonment for not exceeding six months, with or without hard labour, if he forges or counterfeits, or fraudulently defaces or destroys, any ballot paper, or the official mark on any ballot paper, or, without due authority destroys, takes, opens, or otherwise interferes with, any ballot box or packet of ballot papers then in use for the purposes of the election (B. A. s. 3); he is also liable to a similar imprisonment if he infringe the secrecy of the ballot (*ib.* s. 4); and he, his partner, and clerk, is also guilty of misdemeanour if he act as agent for any candidate in the management or conduct of his election (30 & 31 Vict. c. 102, s. 50; B. A. s. 11). As to proceeding for these offences, see 'Election Agent,' pp. 478, 474, 475, 480.

Counting
agent.

The counting agent is bound to exercise a reasonable amount of care and skill in the performance of the duties he undertakes, but is under no special liabilities.

DISABILITIES.

The counting assistant cannot, nor can his partner or clerk, act as agent for any candidate, at the election for

which he acts as counting assistant (30 & 31 Vict. c. 102, s. 50 ; B. A. s. 11). CHAP. I.

The counting agent, if paid, cannot vote (see *ante*, p. 7). Counting
assistant.
Counting
agent.

If the counting agent die, or become incapable of acting, the candidate (or, if paid, the election agent : C. I. P. P. A. s. 27, sub. 1) may appoint another counting agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed (B. A. r. 53). This form of appointment and notice may readily be framed from that given *ante*, p. 3. DEATH OR
INCAPA-
CITY.

CHAPTER II.

PROCEEDINGS BEFORE THE COUNTING OF
THE VOTES.

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<i>and instruction . . .</i>	„	<i>ballot boxes and packets</i>	„

BEFORE
THE POLL
DAY.

—
Making the
declaration
of secrecy.

At some time before the opening of the poll the counting assistant and counting agent must make the statutory declaration of secrecy (B. A. r. 54). The form of this declaration is given in B. A. sch. II., and is as follows:—

I solemnly promise and declare, that I will not at this election for do anything forbidden by section 4 of the Ballot Act, 1872, which has been read to me.

This declaration is invariably made in writing, and subscribed by the declarant. The form is provided by the returning officer, candidate, or election agent, and is usually annexed to the written appointment of the counting assistant or counting agent. The declaration may be made in the presence of, and be taken and received by, the returning officer, or any justice of the peace (B. A. s. 10 ; r. 54). Section 4 of the B. A. referred to in the declaration must be read to the declarant by the returning officer or justice of the peace

taking the declaration (B. A. sch. II., note to the form). CHAP. II.

The appointments of the counting assistants with the annexed declarations may be retained by the returning officer at the time of appointment, or collected as each assistant arrives at the counting hall; those of the counting agents should be collected on arrival of the agents at the counting hall.

Custody of the declarations and appointments.

A meeting of counting assistants is often convened by the returning officer before the poll day for the purpose of mutual discussion and instruction. Such a meeting conduces to accuracy and celerity of procedure, and the interchange of views and difficulties is often very advantageous. The method to be pursued at the counting may be rehearsed, and the various difficulties that may arise or errors that should be avoided, may be considered.

Meeting for discussion and instruction.

The candidate or election agent should also ascertain, before the counting commences, that his counting agents thoroughly understand their duties, and are fully informed as to any special precautions that it is desirable to take in any particular case; and for these purposes he also may usefully hold a meeting of his counting agents.

The returning officer has several preparations to make to enable him properly to conduct the counting of the votes. He shall provide such things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually (B. A. s. 8) counting the votes and ascertaining the result. This involves the consideration of the place of counting, the requisites for counting, and the mode and manner of counting.

Preparing the counting hall.

The place of counting should be a room or hall at the place of election. Its area may be large or small according to the number of electors, and the number of candidates, and as consequent thereon, the number of officials; but it should be of ample size to accommodate,

CHAP. II.

without overcrowding, all persons entitled to attend, and who are likely to be present. The power to use a public school-room for the purpose of the poll (B. A. s. 6) does not extend to taking it for the purpose of counting the votes, though if the person, body of persons, or corporation having control over such a room are empowered, and see fit, to let it to the returning officer for counting the votes, there can be no objection to their doing so, or to his hiring it; but unless any payment therefor can be provided out of the sum allowed to him for "other expenses," he will have to bear such payment out of his own pocket, as he is not allowed a distinct charge for any such room (see 38 & 39 Vict. c. 84, sch. I.). There is no requirement that the place of counting shall be in the county, borough, or electoral division, or that there shall be a place of counting in each electoral division; and the returning officer may therefore appoint the same place of counting for all or any of the electoral divisions into which the county or borough is divided.

Its fur-
niture.

The accounts, papers, and things with which the place of counting shall be furnished, and the mode and manner in which the votes shall be counted, are entirely in the discretion of the returning officer. The practice varies in almost every constituency, and no definite plan applicable to all can be laid down, as so much depends on the number of the electors, the number of the candidates, and the abilities and previous experience of those appointed to count the votes. The following remarks may, however, be of assistance to the returning officer and his advisers in making the necessary arrangements.

The place of counting should be furnished with a number of chairs and tables proportionate to the number of electors in the constituency. Too much subdivision of the work will probably delay rather than hasten it; but, subject to this, the more counting assistants and

tables there are, the quicker will the counting be accomplished. These tables should be placed in convenient positions, with sufficient space between each to pass and repass, and each table should be numbered and labelled (Table No. 1, etc.), and should be furnished with pens, ink, and blotting-paper.

At the top of the room or hall, and if possible on a raised dais, should be placed three tables for the returning officer, under-sheriff (or town clerk), and chief counting assistant. The tables of the returning officer, and of the under-sheriff (or town clerk) should be furnished with pens, ink, and blotting-paper, and any law books that may be required for reference. The chief assistant's table and surrounding space should be furnished with a sufficient supply of all the forms required (a careful record of the precise number of each form supplied should be kept), foolscap paper, pens, ink, blotting-paper, the returning officer's seal, sealing-wax, a candle and matches, mail bags (which will be readily supplied by the post-office, and which should be marked with tickets or cards, Nos. 1, 2, etc.), boxes (appropriately labelled) in which to place the stamping machines, unused stationery, etc., a large box or basket in which to mix the ballot papers, and another in which to place the ballot papers, when counted. The returning officer should also furnish the police or other officer at the entrance door of the counting hall or room with a sufficient number of cards of re-admission; the following is a form:—

COUNTY [OR BOROUGH OR DIVISION] OF

PARLIAMENTARY ELECTION,

189 .

Please readmit Mr.

to the counting hall.

Y. Z.

Sheriff [*or* Mayor] and Returning Officer.

CHAP. II.

Mode of
counting.

Where there is only one vacancy to be filled, no elaborate system of counting is requisite; the ballot papers are simply divided into heaps or batches for each candidate, and counted. Where there are several vacancies, the mode of counting which, after much consideration, seems to the author to be the most expeditious, and at the same time the simplest, is that detailed in the 'Instructions to Counting Assistants,' and 'Instructions to Chief Counting Assistant,' *post*, pp. 71. 75. In other systems the votes are separated, placed on files or in clips (sometimes of different colours, corresponding in number to the number of the candidates), or recorded on enumerating sheets, and then counted; and probably many other variations of these systems are common in practice.

Notice of
counting
votes.

Before proceeding to count the votes (which he must do as soon as practicable after the close of the poll), the returning officer shall give to the agents of the candidates appointed to attend at the counting of the votes, notice in writing of the time and place at which he will begin to count (B. A. r. 32), by delivering such notice at, or sending it by post to the address of each such agent (B. A. r. 52); the following is a form:—

COUNTY [OR BOROUGH OR DIVISION] OF .

PARLIAMENTARY ELECTION,

189 .

I HEREBY GIVE YOU NOTICE that I shall begin to count the votes at o'clock in the noon of day, the day of 189 , at in the above-named county [*or borough or division*].

Dated this day of 189 .

Y. Z.

Sheriff [*or Mayor*] and Returning Officer.

To

Agent for

No length of notice is prescribed, but, inasmuch as the candidates may appoint their agents up to one clear day before the opening of the poll (B. A. r. 52), the returning officer cannot tell until then to whom he may have to give such notice, and thus the day before, or the day of, the opening of the poll seems naturally to be the time when he should give this notice. He is only bound to give notice to such agents as have been duly appointed and notified to him (*ib. rr. 52, 32*).

The presiding officers shall deliver to the returning officer (B. A. r. 29), and the returning officer shall take charge of, the ballot boxes (*ib. s. 2*), and the several packets of ballot papers, registers, lists, declarations, etc. (*ib. r. 29*). Consequently the returning officer must, at the close of the poll, attend at the place appointed for the counting of the votes to receive such ballot boxes, packets, papers, lists, etc. Between the time of his so receiving the ballot boxes, etc., and the time at which he commences to count the votes, the returning officer must place responsible and sufficient persons in charge of the ballot boxes, etc., who shall preserve them intact; it is questionable if he ought not to remain in charge of them himself, as he is responsible for their safe custody (see B. A. s. 2): and it has been suggested by a select committee of the House of Commons that they should be placed in some public building, and either guarded by the police, or protected by the sealing of all issues from the room in which they have been placed with the seals of the returning officer and such of the candidates and their agents as shall demand such precaution (*Parliamentary Papers, 1876, vol. xii., p. xiv.*).

ON THE
POLL DAY.

Attendance
to receive
ballot
boxes and
packets.

CHAPTER III.

COUNTING THE VOTES.

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HOURS OF
COUNTING.

The returning officer shall count the votes (B. A. s. 2) as soon as practicable after the close of the poll (B. A. r. 32); and shall, so far as practicable, proceed

continuously therewith, allowing only time for refreshment, and excluding, except so far as he and the candidates' counting agents otherwise agree, the hours between 7 P.M. and 9 A.M. on the succeeding morning (B. A. r. 35); and thus, as the poll does not close until 8 P.M. (48 & 49 Vict. c. 10, s. 1), the returning officer cannot, unless *all* the agents, present at the counting, consent, commence or proceed with the counting until the morning after the close of the poll. Such consent may be verbal, and, if once given and acted upon by the returning officer, cannot, it is apprehended, be withdrawn without his assent. There seems to be no legal objection to counting the votes on a Sunday, but the returning officer is not bound to do so, but may delay the proceedings until the Monday (see B. A. r. 56).

During the excluded time, the returning officer shall place the ballot papers, and other documents relating to the election, under his own seal, and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents (B. A. r. 35), in the same manner as when they are first delivered to him (see *ante*, p. 15).

Custody of
ballot
papers and
documents.

The returning officer shall, in the presence of such agents, if any, of the candidates, as may be in attendance (B. A. r. 55), open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate (B. A. s. 2, and r. 32). The returning officer may refuse to admit to the place where the votes are counted, any candidate's agent whose name and address has not been transmitted to him one clear day at the least before the opening of the poll (*ib.* r. 52; and see *ante*, p. 3). He should refuse to admit any agent who has not made the declaration of secrecy (*ib.* r. 54; see as to this, *ante*, p. 10), and he should, therefore,

PROCEED-
INGS AT
COUNTING.

Who may
be present.

CHAP. III.

inform himself as to who have or have not made such declaration. He is bound to admit the candidates (*ib.* r. 51 ; *Clementson v. Mason*, L. R. 10 C. P. 209), all agents duly appointed by the candidates, and duly notified to him (B. A. s. 2, rr. 33, 52), and he, of course, admits his own assistants and clerks, but no other person, except with his (the returning officer's) sanction, may be present (*ib.* r. 33). This sanction obviously should not be given to any person other than those entitled to be, or necessarily, present. The returning officer need not wait for any candidate's agent who does not attend (see B. A. r. 55). The returning officer, and every clerk or agent so attending must have made the declaration of secrecy before the opening of the poll (*ib.* r. 54), in the manner pointed out, *ante*, p. 10.

Recording,
mixing, and
counting
the ballot
papers.

The returning officer shall (first) open each ballot box, and, taking out the *papers* therein, shall count and record the number thereof (B. A. r. 34) : for a form of this record see Form B., *post*, p. 73. He shall (secondly) then mix together the whole of the ballot papers contained in all the ballot boxes (B. A. r. 34). He shall (thirdly) count the *votes* (*ib.*). For these purposes it is necessary that the folded ballot papers should be opened in order to expose their faces, and in opening them it is impossible to avoid seeing their backs, and it is the duty of the returning officer (a duty which the candidates and their counting agents are entitled to supervise) to examine both sides of the ballot papers (*Thornbury*, 16 Q. B. D. 751) ; but the returning officer, while thus counting and recording the number of *ballot papers*, and counting the *votes*, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers (B. A. r. 34). Although the candidates and their counting agents have thus a right

to see the backs as well as the fronts of the papers, they have no right to look at the numbers on those backs, and the returning officer and his counting assistants may prevent it; they need not let the papers out of their hands, and may double up the numbers (*Thornbury*, 2 Times L. R. 488), a course which was substantially taken by Denman, J., in chambers when re-counting the votes in the *Ashton-under-Lyne* petition, 1885. They may also direct the candidates and their counting agents to retire to such a position, or distance from the counting table, as will prevent their having any opportunity of seeing the numbers on the backs of the ballot papers, though not to such a position or distance as will prevent their supervising the counting and recording of the number of the ballot papers.

Again, although the candidates' counting agents are entitled to be present while the returning officer is counting and recording the number of *ballot papers* taken from each ballot box, they are not entitled to count or record the number of *votes* given for any particular candidate in any particular polling district or in any particular ballot box; and the returning officer should take all possible means to prevent this, or any other improper exercise of their right of supervision and of being present.

Throughout the counting, the returning officer must take all necessary precautions and steps to insure secrecy. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper, under penalty of not exceeding six months' imprisonment, with or without hard labour (B. A. s. 4).

Precau-
tions as to
secrecy.

CHAP. III.

Mode of
counting.

The different systems of counting votes now in vogue, and the system which, in the case of an election to fill two or more vacancies, the author recommends are discussed *ante*, p. 14. Whatever system is adopted, the first step is to separate the good from the bad or doubtful votes, and the doubtful votes should be again separated into the five classes specified *post*, pp. 22, 23. The bad and doubtful votes must be open to the inspection of the candidates and their counting agents, but they must not be allowed to see the numbers printed on the backs of the ballot papers (see *ante*, p. 18).

OBJECTION
TO BALLOT
PAPER.

Jurisdic-
tion of
returning
officer.

The returning officer is to decide any question arising in respect of any ballot paper (B. A. s. 2), but the B. A. relates to procedure alone, and contains no enactment affecting the franchise (*Thornbury*, 16 Q. B. D. 746); and the returning officer has no jurisdiction to determine any question affecting the legality of the vote given (*R. v. Bangor, Mayor of*, 18 Q. B. D. 363, 368; *S.C.* in H. L., 13 App. Cas. 249, 250), or to hold a scrutiny (6 & 7 Viet. c. 18, s. 82). His function is judicial, so far as regards any inquiry into the validity of the voting papers *as papers*, and to see whether they comply with the statute, or whether there is any objection to them; but beyond that his functions are purely ministerial—to count the votes, and to declare the result of that counting (*Pritchard v. Bangor, Mayor, etc., of*, 13 App. Cas. 249, 250). The question of whether any particular mark is or is not intended to be a vote, and if a vote, whether for one or more candidates, is a question of fact rather than of law, and is one for the returning officer in the first instance to decide, but is subject to reversal on election petition (B. A. s. 2; *Woodward v. Sarsons*, L. R. 10 C. P. 748; *Phillips v. Goff*, 17 Q. B. D. 815, 816). In exercising this jurisdiction the returning officer (or his deputy) acts judicially (*Thornbury*,

16 Q. B. D. 751 ; *R. v. Owens*, 2 E. & E. 91 ; *Pritchard v. Bangor, Mayor, etc., of*, 13 App. Cas. 249), and thus cannot delegate this duty to any one else. CHAP. III.
—

In dealing with any question which he is empowered to deal with in respect of any ballot paper, the returning officer should remember that it is not every departure from the regulations of the B. A. that will render the vote invalid ; and, that while, on the one hand, the enactments contained in the body of the Act are absolute, and must be obeyed by the voter *exactly*, yet that, on the other hand, the rules and forms in the schedule are directory merely, and it is sufficient if they be obeyed *substantially* (*Woodward v. Sarsons*, L. R. 10 C. P. 746 ; *acc. Phillips v. Goff*, 17 Q. B. D. 812). He should also bear in mind that statutory provisions in general are directory where the thing to be done is to be done by an officer, but are mandatory where it is to be done by the voter (*Thornbury*, 2 Times L. R. 485). Construc-
tion of the
B. A.

Keeping these principles in mind, it will be found that the following are absolute enactments which must be obeyed exactly, and a breach of which will render the vote void :—the voter shall mark his ballot paper secretly (*Woodward v. Sarsons*, L. R. 10 C. P. 747) ; the ballot paper shall be marked on the back with the official mark (*Thornbury*, 16 Q. B. D. 739) ; the ballot paper shall not be so filled up or marked as that the voter can be identified (*Wigtown*, 2 O'M. & H. 216 ; *Woodward v. Sarsons*, L. R. 10 C. P. 747), as if, for example, the voter marks the face of the ballot paper with his name or initials (*Woodward v. Sarsons*, L. R. 10 C. P. 749, 750), or the presiding officer marks such face with the voter's register number (*ib.* 748 ; but see *Thornbury*, 2 Times L. R. 485, and *post*, p. 25) Mandatory
enact-
ments.

But the *manner* in which the voter shall secretly mark his ballot paper is regulated by the rules and forms Directory
enact-
ments.

contained in the schedule to the B. A., and, as these are directory merely, it is sufficient if they be obeyed substantially (*Woodward v. Sarsons*, L. R. 10 C. P. 747; *acc. Phillips v. Goff*, 17 Q. B. D. 812). There is, therefore, no objection to making the mark with ink instead of with a pencil, provided it be not a peculiar ink (*Wigtown*, 2 O'M. & H. 223); or with a blunt knife, piece of wood, or finger nail (*Berwick-on-Tweed*, 3 *ib.* 180). The *form of the mark* is also, in the absence of evidence of collusion or pre-arrangement, immaterial (see the instances of good and bad ballot papers, *post*, p. 26 *et seq.*). And, when the matter is one over which the voter has no control, the vote is not to be considered bad by reason of an omission or error of an officer (*Thornbury*, 16 Q. B. D. 746); thus, the wrapping up of the votes of illiterate voters, each in the corresponding declaration of inability to read, and then placing the two together in the ballot box, will not render the votes void (*Woodward v. Sarsons*, L. R. 10 C. P. 748); nor will the insertion of the same candidate's name twice in the ballot paper, the one being in respect of a valid nomination, and the other in respect of an invalid nomination, render either set of votes void (*Northcote v. Pulsford*, *ib.* 483). The omission of the presiding officer to indorse the voter's name upon a tendered ballot paper (*Stepney*, 4 O'M. & H. 43), or to stamp the *face* of the ballot paper with the official mark, does not invalidate the vote (*Thornbury*, 16 Q. B. D. 746); but the omission to insert in the counterfoil the voter's register number may perhaps render the vote void on a scrutiny (*Pickering v. Startin*, 28 L. T. 111).

Ballot
papers
which *shall*
be rejected.

The returning officer shall reject, and shall not count, any ballot paper:—

- (1.) Which has not on its back the official mark (B. A. s. 2; see *post*, p. 122).

(2.) On which votes are given to more candidates than the voter is entitled to vote for (*ib.*; see *infra.*)

(3.) On which anything, except the printed number on the back, is written or marked by which the voter can be identified (*ib.*; see *post*, p. 24).

He is also bound to reject any ballot paper :—

(4.) Which is not marked (B. A. r. 36; see *post*, (p. 39).

Apparently, he must also reject any ballot paper :—

(5.) Which is void for uncertainty (*ib.*; see *post*, (p. 40).

With regard to the first of these classes, the presiding officers and their poll clerks can be alone to blame for the absence of the official mark on any ballot paper; and if competent persons are appointed to these posts, and if they do their duty, no ballot paper ought to be subject to the returning officer's rejection upon this ground. If there is no official mark whatever, the ballot paper must be rejected (*Wigtown*, 2 O'M. & H. 216); but, if the official mark appears on the back of the ballot paper, its absence from the face of the paper does not render the vote void (*Thornbury*, 16 Q. B. D. 746).

1. Want of official mark.

With regard to the second of the above classes, it occasionally happens that a voter makes a mistake in marking his votes, and, instead of obtaining another ballot paper, seeks by some means to obliterate his error, and afterwards marks his votes correctly. In any such case, the returning officer must decide whether the additional marks are mere cancellations of errors which in his judgment do not invalidate the votes, or whether they are such marks as would lead to the identification of the voter, and therefore invalidate the ballot paper under the next head. See the facsimile copies of the

2. Voting for more candidates than entitled to.

CHAP. III.

ballot papers in *Woodward v. Sarsons*, numbered 1632, 1726, and 926, *post*, pp. 31, 32, 35.

3. Writing
or mark by
which
voter can
be identi-
fied.

In dealing with the third of the above classes, viz., ballot papers upon which anything, except the number on the back, is written or marked by which the voter *can* be identified, the returning officer must form the best judgment he can upon the materials before him ; and, if in his judgment the mark or marks do not amount to marks by which the voter *can* be identified, the ballot paper is valid, and the votes appearing thereon must be counted. The returning officer is not bound to call for evidence, nor to hold an inquiry for establishing the voter's identification, or for the purpose of shewing that the voter had, by previous concert with others, intended to make it known for whom he voted (*Wigtown*, 2 O'M. & H. 225) ; but, on the other hand, he may and apparently ought to receive any evidence, that is tendered to him, to show that a peculiar mode of marking was resorted to by pre-arrangement or collusion, to indicate that the paper so marked was the one used by a particular voter or for any other improper identification (*Woodward v. Sarsons*, L. R. 10 C. P. 749). For example, it is conceivable that a bribe might be promised to (say) twelve voters to vote for A. B., conditionally on their marking their ballot papers with a peculiar mark, or with a mark in a peculiar position, or made with a peculiar pencil or instrument, such bribe to be paid after the counting agents for A. B. should have noticed that twelve ballot papers are marked for A. B. in the stipulated manner ; and if at the counting of the votes the returning officer is of opinion that the recurrence of a series of similar peculiar marks is in itself evidence of such a pre-arrangement, or if distinct evidence thereof is adduced, he is entitled, and seemingly bound, to reject the votes (see *Woodward v. Sarsons*, L. R. 10

C. P. 749) ; though if he is of opinion that the irregularity or peculiarity is innocent, or the result of ignorance, or inadvertence, he should allow the votes, and leave the party attacking the votes to seek his remedy by election petition. The register number of the voter, being a mark by which, on reference to the register, the voter can be identified, the court in one case rejected 294 ballot papers because they were marked upon their faces by the presiding officer with such numbers (*Woodward v. Sarsons*, L. R. 10 C. P. 748, 735) ; but, in a subsequent case, it was held that the voter is not to lose his vote for any act or default of an officer, in a matter in which he (the voter) has no control (*Thornbury*, 2 Times L. R. 485, 490). From the latter decision it would appear that the mark creating the identity must, to render the vote void, be made by the voter himself, and not by an officer, and that thus the former decision is no longer law.

Several cases have come before the courts in which instances of irregularly marked ballot papers have been considered, and these may serve as guides to the returning officer in determining any question that may come before him. From these decisions it appears that the returning officer ought to reject any ballot paper which is marked with :—

Ballot
papers held
to be bad.

(1.) The register number of the voter (*Woodward v. Sarsons*, L. R. 10 C. P. 748, 735 ; but see *Thornbury*, 2 Times L. R. 485, 490).

(2.) The name of the candidate voted for (*Woodward v. Sarsons*, L. R. 10 C. P. 748 ; but see *Buckrose*, 8th Dec. 1886) ; thus the following* have both been held to be bad :—

* The facsimile copies of ballot papers in this chapter have been obtained as follows : those in *Woodward v. Sarsons* and *Buckrose* (*Sykes v. McArthur*) from the solicitors engaged in the petitions ; and those in *Stepney* (*Isaacson v. Durant*) from the originals then in the custody of the registrar of the court.

CHAP. III.

844.

Ballot
papers held
to be bad.

1	SARSONS.	<i>Sarson</i>
2	WOODWARD.	

889.

1	SARSONS.	<i>Sarsons</i>
2	WOODWARD.	

(3.) The name of the voter (*Woodward v. Sarsons*, L. R. 10 C. P. 749 ; *acc. Buckrose*, 8th Dec. 1886) ; thus :—

CHAP. III.

Ballot
papers held
to be bad.

638.

1	SARSONS.	X
2	WOODWARD.	

E. Prews

(4.) The name of any third party (*Wigtown*, 2 O'M. & H. 216 ; *acc. Buckrose*, 8th Dec. 1886). In another case the court differed, one judge holding that the following vote was good, the other that it was bad (*Stepney*, 4 O'M. & H. 40) ; viz. :—

FRONT OF BALLOT PAPER.

BALLOT PAPER.

1	DURANT. (JOHN CHARLES DURANT, of Clement's House, Clement's Inn Passage, W.C., Printer.)	
2	ISAACSON. (FREDERICK WOOTTON ISAACSON, of 152, Harley Street, W., Gentleman.)	X

BACK OF BALLOT PAPER.

1219.

Election for the Stepney Division of the
Borough of
THE TOWER HAMLETS.

November, 1885.

John Micheltt
X

The weight of authority is certainly in favour of the above vote being bad, and the returning officer should therefore reject any ballot paper so marked.

CHAP. III.
Ballot
papers held
to be bad.

(5.) Initials in addition to a cross (*Woodward v. Sarsons*, L. R. 12 C. P. 750) ; thus :—

410.

1	SARSONS.	
2	WOODWARD.	CH X

(6.) A circle instead of a cross (*Stepney*, 4 O'M. & H. 37 ; *Wigtown*, 2 *ib.* 221 ; *contra*, *Buckrose*, 4 *ib.* 112) ; thus :—

4347.

1	DURANT. (JOHN CHARLES DURANT, of Clement's House, Clement's Inn Passage, W.C., Printer.)	○
2	ISAACSON. (FREDERICK WOOTTON ISAACSON, of 152, Harley Street, W., Gentleman.)	

CHAP. III.

It is, however, difficult to see what difference in principle there is between making a circle and making a star, a peculiar mark, or a geometrical figure, all of which have been held to be good (see *post*, pp. 34, 33, 35), and the last decision (*Buckrose*, 4 O'M. & H. 112) holding a circle to be a good mark, seems to be more correct than the earlier decisions.

Ballot
papers held
to be good.

Provided there be no evidence of connivance or pre-arrangement, the returning officer may allow and may count any ballot paper which is marked with :—

(1.) Two crosses, or three crosses, instead of one cross (*Woodward v. Sarsons*, L. R. 10 C. P. 742, dissenting from *Wigtown*, 2 O'M. & H. 218). Thus, the following are all good :—

433.

1	SARSONS.	X X
2	WOODWARD.	

1632.

1	SARSONS.	
2	WOODWARD.	X

X

On 1632 a X in pencil had evidently been rubbed with a damp finger, as shewn.

928.

1	SARSONS.	X
2	WOODWARD.	

X

CHAP. III.
 Ballot
 papers held
 to be good.

928 had evidently been marked with a X in ink and folded up, thereby making a corresponding mark on the other part of the paper.

1726.

1	SARSONS.	X
2	WOODWARD.	

(2.) A single stroke, or a straight line, in lieu of a cross (*Woodward v. Sarsons*, L. R. 10 C. P. 749, dissenting from *Wigtown*, 2 O'M. & H. 218) ; thus :—

875.

1	SARSONS.	/
2	WOODWARD.	

(3.) A straight stroke in addition to the cross (*Woodward v. Sarsons*, L. R. 10 C. P. 749, dissenting from *Wigtown*, 2 O'M. & H. 219) ; thus :—

CHAP. III.

Ballot
papers held
to be good.

2140.

1	SARSONS.	X
2	WOODWARD.	

(4.) A mark like an imperfect letter P. in addition to the cross (*Woodward v. Sarsons*, L. R. 10 C. P. 749) ; thus :—

3562.


1	SARSONS.	X P
2	WOODWARD.	

CHAP. III.

(5.) A star instead of a cross (*ib.*) ; thus :—



Ballot
papers held
to be good.

641.

1	SARSONS.	
2	WOODWARD.	

(6.) A peculiarly formed cross (*ib.*) ; thus :—

1364.

1	SARSONS. 	
2	WOODWARD.	


The last ballot paper (1364) had evidently been marked with a X in ink and folded up, thereby making a corresponding mark on the other part of the paper.

(7.) A cross blurred, or rubbed with a damp finger, and a better formed cross added (*ib.*) ; thus :—

CHAP. III.

Ballot
papers held
to be good.


926.

1	SARSONS.	
2	WOODWARD.	

(8.) A figure instead of a cross (*Phillips v. Goff*, 17 Q. B. D. 805).

(9.) A geometrical figure in lieu of a cross (*Buckrose*, 7th Dec. 1886 ; *contra Wigtown*, 2 O'M. & H. 221) ; thus :—

7665.

1	MCARTHUR. (WILLIAM ALEXANDER MCARTHUR, of 7, Berkeley Street, Berkeley Square, London, Colonial Merchant.)	
2	SYKES. (CHRISTOPHER SYKES, of Brantingham Thorpe, Yorkshire, Esquire.)	

CHAP. III.

Ballot

papers held
to be good.

(10.) A line drawn through the name of the candidate not voted for, and a cross marked against the name of the other candidate (*Woodward v. Sarsons*, L. R. 10 C. P. 748); thus :—

911.

1	SARSONS.	X
2	WOODWARD.	

(11.) Torn longitudinally through the centre (*ib.*), as shown by the dotted line in the following :—

1374.

1	SARSONS.	
2	WOODWARD.	X

(12.) A cross placed on the right hand side of the paper, but in the space in which the candidate's name was printed, and on the left of, and not within, the space allotted for the cross (*Athlone*, 2 O'M. & H. 187).

CHAP. III.
Ballot
papers held
to be good.

(13.) A cross on the left instead of the right hand side of the candidate's name (*Woodward v. Sarsons*, L. R. 10 C. P. 749, dissenting from *Wigtown*, 2 O'M. & H. 218). Thus the following are all good :—

155.

1 X	SARSONS.	
2	WOODWARD.	

174.

1	X SARSONS.	
2	WOODWARD.	

X 1	SARSONS.	
2	WOODWARD.	

(14.) A cross, or a stroke or strokes, or a figure, on the back in addition to the cross on the face of the ballot paper, provided there be no evidence that the voter can be identified by the writing (*Stepney*, 4 O'M. & H. 39; *acc. Buckrose, ib.* 111; dissenting from *Wigtown*, 2 O'M. & H. 219); thus :—

FRONT OF BALLOT PAPER.

1	DURANT. (JOHN CHARLES DURANT, of Clement's House, Clement's Inn Passage, W.C., Printer.)	
2	X ISAACSON. (FREDERICK WOOTTON ISAACSON, of 152, Harley Street, W., Gentleman.)	

BACK OF BALLOT PAPER.

1002



Election for the Stepney Division of the
Borough of
THE TOWER HAMLETS.

November, 1885.

It will be observed that in this case the cross on the back is not in a corresponding position to that on the front, and that if the ballot paper be held up and looked at with the light through it, the cross on the back appears as if made in the proper square on the right hand side of Durant's name, and that thus dealt with, the ballot paper shows a cross opposite the name of each candidate.

With regard to the fourth of the above classes, the unmarked ballot papers, of course, present no difficulty. Few will, however, be found to be wholly unmarked, and it must be remembered that a ballot paper may be well marked, although it is not marked with the pencil provided for the purpose (see *ante*, p. 22). Some ballot papers that appear at first sight to be unmarked will probably be found to be marked on the back; but in inspecting the backs, all proper precautions for preventing any person from seeing the numbers printed thereon

4. Un-
marked
ballot
papers.

CHAP. III.

must be taken by the returning officer (B. A. r. 34), *e.g.* the number should be doubled up (*Thornbury*, 2 Times L. R. 488). A ballot paper marked on the back *only* should be rejected (*Berwick-on-Tweed*, 3 O'M. & H. 182; *acc. Buckrose*, 4 *ib.* 111); but a ballot paper marked on the back, if well marked on the face, and unless bad under the third class (*ante*, p. 24), should be counted (*Stepney*, 4 O'M. & H. 39; *Buckrose*, *ib.* 111; but see *Wigtown*, 2 *ib.* 219).

5. Void
for uncer-
tainty.

With regard to the fifth and last of the above classes, viz. ballot papers void for uncertainty, where the mark is so placed as to render it impossible to decide for whom the vote was intended to be given, the ballot paper must be rejected (*Phillips v. Goff*, 17 Q. B. D. 815). If the cross be marked at the top corner of the paper, outside the parallelogram containing the candidate's name, and outside the space for the cross, the ballot paper is bad for uncertainty (*Berwick-on-Tweed*, 3 O'M. & H. 182; *Stepney*, 4 *ib.* 37; *Buckrose*, *ib.* 111); thus the following are both bad :—

X
BALLOT PAPER.

1	HOME. (DAVID MILNE HOME, of Paxton House, in the Shire of Berwick, in Scotland, a Captain in the Royal Regiment of Horse Guards.)	
2	MCLAREN. (JOHN MCLAREN, of 46, Moray Place, Edinburgh, Lord Advocate for Scotland.)	

4047.

BALLOT PAPER.

X

1	DURANT. (JOHN CHARLES DURANT, of Clement's House, Clement's Inn Passage, W.C., Printer.)	
2	ISAACSON. (FREDERICK WOOTTON ISAACSON, of 152, Harley Street, W., Gentleman.)	

Again, if there is a good mark against the name of each candidate, the ballot paper is clearly void for uncertainty (*Buckrose*, 4 O'M. & H. 111) ; thus the following are both bad :—

1989.

X 1	MCARTHUR. (WILLIAM ALEXANDER MCARTHUR, of 7, Berkeley Street, Berkeley Square, London, Colonial Merchant.)	
2	SYKES. (CHRISTOPHER SYKES, of Brantingham Thorpe, Yorkshire, Esquire.)	

1	HOLLAND.	/
2	LORNE.	X


If the intersection of the cross is exactly on the line between the compartments of the paper, the ballot paper is void for uncertainty (*Buckrose*, 7th Dec., 1886); thus :—

8892.

1	MCARTHUR. <small>(WILLIAM ALEXANDER MCARTHUR, of 7, Berkeley Street, Berkeley Square, London, Colonial Merchant.)</small>	
2	<div style="text-align: center;">X</div> SYKES. <small>(CHRISTOPHER SYKES, of Brantingham Thorpe, Yorkshire, Esquire.)</small>	

But where the voter marked a long cross, each line thereof being partly in the square allotted to one candidate and partly in that of the other, the ballot paper was allowed as a good vote for the candidate in whose square the intersection of the cross appeared (*Berwick-*

on-Tweed, 3 O'M. & H. 182; *acc. Buckrose*, 7th Dec., CHAP. III.
1886); thus :—

1	<p style="text-align: center;">HOME.</p> <p>(DAVID MILNE HOME, of Paxton House, in the Shire of Berwick, in Scotland, a Captain in the Royal Regiment of Horse Guards.)</p>	
2	<p style="text-align: center;">MCLAREN.</p> <p>(JOHN MCLAREN, of 46, Moray Place, Edinburgh, Lord Advocate for Scotland.)</p>	

If the only mark on the ballot paper is a cross made immediately upon the name of one of the candidates, in such a way as to make it appear possible that the voter intended to strike out that name, the ballot paper is void for uncertainty (*Buckrose*, 4 O'M. & H. 112).

Upon the back of every ballot paper which the returning officer may reject as invalid (*Thornbury*, 16 Q. B. D. 751), he shall indorse "rejected," and shall add to the indorsement "rejection objected to," if an objection be in fact made by any agent to his decision (B. A. r. 36); but the omission to make these indorsements will not render the election void (see *Woodward v. Sarsons*, L. R. 10 C. P. 746).

The returning officer may adjourn the proceedings for the purpose of finishing the counting (*R. v. Bangor, Mayor, etc., of*, 18 Q. B. D. 363); but not, it would seem, for the purpose of considering, or taking advice on any question that comes before him (*ib.* 363, 354; *Pritchard v. Bangor, Mayor, etc., of*, 13 App. Cas. 250). In the former case the same precautions should be taken for the

Indorse-
ment on
rejected
ballot
paper

ADJOURN-
MENT OF
COUNTING.

CHAP. III.

safe custody of the ballot papers, etc., as when they are originally delivered to the returning officer (see *ante*, p. 15).

VOTES
WRONGLY
CAST-UP.

Where the returning officer thinks that there has been an error in the counting, he can re-count the votes before he declares the result (*R. v. Bangor, Mayor, etc., of*, 18 Q. B. D. 354; and see *Stepney*, 2 Times L. R. 571). But if, after he has declared the result, the counting is still erroneous, the mistake can only be rectified by filing an election petition praying a re-count (*Renfrew*, 2 O'M. & H. 213; *Ashton-under-Lyne*, 1885; and see *Dublin*, 1 P. R. & D. 193); and, if at the termination of a scrutiny the votes are equal in number, the election is a void election (*Downton*, 1 Lud. 264). When the seat is claimed on election petition, the respondent may claim a re-count (*Stepney*, 4 O'M. & H. 35, 49).

Votes erroneously
counted or
rejected.

Where the returning officer's decision as to any question arising in respect of any ballot paper is deemed to be erroneous, an election petition can be presented (B. A. s. 2); *e.g.* where he erroneously counts or rejects any ballot paper (*Londonderry*, 4 O'M. & H. 96; *Stepney*, *ib.* 35).

CASTING
VOTE.

Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of the county, division, or borough, may give such additional vote (B. A. s. 2). A returning officer of a division of a borough in which he is not entitled to vote, cannot give a casting vote though he be entitled to vote in some other division of the same borough (see 48 & 49 Vict. c. 23, s. 13, sub. 5); and a returning officer of a division of a borough in which he is registered as a voter, cannot give an original vote in such division, though, if so entitled, he may vote in any division in which he is not acting as returning officer.

Whether the returning officer should give a casting vote or not, is entirely a question for him to decide in each particular case ; on the one hand, he cannot be blamed for exercising a power with which the legislature has endowed him ; on the other hand, he is not bound to give a casting vote, but may decline to do so (as in *South Northumberland*, May, 719 n). It is, however, submitted that the legislature, by giving this power to the returning officer, has intended that it should be exercised, and that the inconveniences of a double return should thus be avoided ; and that consequently, in the absence of special circumstances showing the contrary, the returning officer ought to give his casting vote. The casting vote, if given, is not given by ballot, as such a vote does not come within the scope of the Act, since every one present must necessarily know for whom the vote is given ; and, moreover, the poll, which is taken by ballot, has closed before the casting vote is given. It should be given by word of mouth by the returning officer for the candidate for whom he votes, and having been added to the number previously recorded for that candidate, such candidate having thus obtained a majority of votes, should be declared duly elected (see further as to this declaration, *post*, p. 48). If the returning officer be not a registered elector, or if he do not choose to give his casting vote, he must make a double or treble return, as the circumstances of the case may require (see *post*, p. 52). If he should vote where there is not an equality of votes, or where the addition of a vote would not entitle any of the candidates to be declared elected, or where he is not a registered elector of the county, division, or borough, his vote will be struck off on a scrutiny (*Cunn.* 401) ; and if he vote, knowing that he is not entitled to vote, he is guilty of an illegal practice (*C. I. P. P. A.* s. 9, sub. 1).

CHAP. III.

SEALING
UP THE
PACKETS.Verifica-
tion of
ballot
paper
accounts.Report to
clerk of
the crown.

Upon completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers (B. A. r. 37). He shall not open the sealed packets of tendered ballot papers used, or those containing the registers of voters and counterfoils of ballot papers used (*ib.*), and the chief constable's certificates. He must open the sealed packets containing the unused and spoilt ballot papers, tendered and ordinary, and also the packets containing the tendered votes lists, for he shall, in the presence of such agents of the candidates (B. A. r. 37) as are authorized to attend (B. A. rr. 31, 52), and do attend (B. A. r. 55), proceed to verify the ballot paper account given by each presiding officer, by comparing it with the number of ballot papers recorded by him (the returning officer) as aforesaid (see *ante*, p. 18), and the unused and spoilt ballot papers in his possession, and the tendered votes list (B. A. r. 37). He shall then re-seal each sealed packet so opened for examination by him (*ib.*). He shall report to the clerk of the crown in chancery the result of such verification (*ib.*), and also the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark ;
2. Voting for more candidates than entitled to ;
3. Writing or mark by which the voter can be identified ;
4. Unmarked or void for uncertainty ;

and shall, on request, allow any agents of the candidates, before such report is sent, to copy it (B. A. rr. 36, 37).

Form of
report.

The following is a form of such report :—

PARLIAMENTARY ELECTION, 189 .

CHAP. III.
—

SIR,

I have the honour to report to you that the number of ballot papers rejected and not counted by me at the parliamentary election for the county [*or division or borough*] of _____ held on the _____ day of _____ 189 , is _____, which number is made up as follows:—

Want of Official Mark.	Voting for more Candidates than entitled to.	Writing or Mark by which voter could be identified.	Unmarked or Void for Uncertainty.

Also that I have verified the ballot paper account given by each presiding officer at this election, by comparing the same with the number of ballot papers taken out of the several ballot boxes and recorded by me, the unused and spoiled ballot papers in my possession, and the tendered votes list, and that the result of such verification is that the said accounts were all correct [excepting that there are _____ unused or spoiled ballot papers not accounted for, *or as the case may be*].

Dated this _____ day of _____, 189 .

(Signed) Y. Z.,

Sheriff [*or Mayor*] and Returning Officer.

To the Clerk of the Crown in Chancery.

CHAP. III.

The following is a form of the ballot paper account ;—

Form of
ballot
paper
account.

COUNTY [OR BOROUGH OR DIVISION] OF _____ .

PARLIAMENTARY ELECTION, _____, 189 .

Polling District No.

Polling Station No.

Ballot Paper Account.

Number of ballot papers received from returning
officer (exclusive of tendered ballot papers) . . .

Number unused

Number spoilt

Balance, being the number of USED ballot papers
which ought to be in the ballot box . . .

Tendered Ballot Paper Account.

Number of tendered ballot papers (coloured) received
from returning officer

Number unused

Number spoilt

Balance, being the number of tendered ballot
papers USED and in Packet No. 4.

(Signed)

S. T.,
Presiding Officer.

DECLARA-
TION OF
RESULT.

Having ascertained the result of the poll by counting
the votes given to each candidate, the returning officer
shall forthwith declare to be elected the candidates or

candidate to whom the majority of votes has been given (B. A. s. 2). This declaration is usually publicly made outside the hall or place in which the votes are counted, immediately after the result has been ascertained; and there seems to be no legal objection to making it on a Sunday. It is to be made "forthwith," and therefore must not be postponed until the next day, or delayed for any reason whatever (*Pritchard v. Bangor, Mayor, etc., of*, 13 App. Cas. 250, 258). "Forthwith" does not mean immediately (*Roberts v. Brett*, 34 L. J. C. P. 241), but within a reasonable time (*R. v. Price*, 8 Moore 203; *R. v. Worcester, Justices of*, 7 Dowl. 789; *Tennant v. Bell*, 9 Q. B. 684; *Costar v. Hetherington*, 1 El. & El. 802). It would seem that if, contrary to this provision, the returning officer should remain silent and make no formal declaration, the candidate having the majority of votes would nevertheless be duly elected (*Pritchard v. Bangor, Mayor, etc., of*, 13 App. Cas. 241).

CHAPTER IV.

PROCEEDINGS AFTER THE COUNTING OF
THE VOTES.

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RETURN TO
WRIT OF
ELECTION.

Signature.

THE declaration of the result having been made, as mentioned in the last chapter (*ante*, p. 48), the returning officer shall forthwith return the names of the candidates or candidate elected to the clerk of the crown in chancery (B. A. s. 2), by certificate under his hand, indorsed on the writ of election (*ib.* r. 44) in the form given by the Act (B. A. sch. II.) The certificate should be in the handwriting of, or signed by the returning officer, or it may be held to be insufficient (*Londonderry*, P. & K. 272; *Limerick*, *ib.* 373); the following is the form:—

I hereby certify, that the members [*or member*] elected for
in pursuance of the within-written writ, are [*or is*]
A. B. of in the county of , and *C. D.* of
in the county of .

CHAP. IV
Form.

(Signed) Y. Z.

High Sheriff [*or Sheriff, or Mayor, or as the case may be*].

If the candidate elected be alleged to be disqualified, the returning officer should nevertheless return him, and should thus leave the objector, or the candidate next in order to the candidate elected and alleged to be disqualified, to seek his remedy by election petition, or otherwise as he may be advised. The returning officer is no judge of the eligibility of candidates (*Heyw. Co. 526; Pritchard v. Bangor, Mayor, etc., of, 13 App. Cas. 249, 250*); nor can he be expected to take upon himself to decide nice questions of law or fact upon the spur of the moment, and during the heat of an election contest (see *Rog. 692; Sim. 183; Dumfermling, 1 Peck. 16 n.*)

Where candidate alleged to be disqualified.

The returning officer may, if he think fit, deliver the writ, with his certificate indorsed, to the postmaster of the principal post-office of the place of election, or his deputy, and in that case he shall take a receipt for the same, and such postmaster or deputy shall then forward the same by the first post, free of charge, under cover to the clerk of the crown, with the words "election writ and return," indorsed thereon (*B. A. r. 44*). The clerk of the crown prefers the writ and return to be sent separately, and not in the mail bags with the ballot papers, etc. The return is not complete until it has reached the hands of the clerk of the crown, so that he may act upon it (*Hurdle v. Waring, L. R. 9 C. P. 435*).

Transmission to the clerk of the crown.

A returning officer is liable to an action for wilful delay or neglect in making a return (*31 & 32 Vict. c. 125, s. 48*; and see hereon *Election Agent, p. 477*). He may also be punished by the House (*Heyw. Co. 668; 1 Peck.*

Wilful delay or neglect in making return.

CHAP. IV.

xlvi. ; May, 703), for though a complaint of his conduct may now be inquired into by the election judges (31 & 32 Vict. c. 125, s. 51), they may make a special report to the speaker (*ib.* s. 11, sub. 15), and the House may make such order thereon as it thinks proper (*ib.* s. 14), and thus the ancient jurisdiction of the House of Commons over returning officers seems to be preserved (see Rog. 688).

DOUBLE
RETURN.

Where
votes are
equal.

If the votes are equal, and the returning officer is not a registered elector, or does not exercise his privilege in such case of giving a casting vote (B. A. s. 2 ; and see *ante*, p. 44), it is his duty to return all candidates who have an equal number of votes (Resolution of House, 121 Journ. 486, cited Rog. 690), as in *Athlone* (2 O'M. & H. 186), and the election is void if on a scrutiny the votes remain equal in number (*Downton*, 1 Lud. 264).

Where
ballot
papers lost
or des-
troyed.

Again, if a ballot box or ballot papers be lost or destroyed in transmission from the polling station to the counting hall, and the returning officer is able to ascertain approximately the votes given, it has been held that a double return may be made (*Cardigan*, B. & Aust. 264). But this decision was given when the voting was open ; now that it is secret, it is impossible to see how the returning officer can "ascertain approximately the votes given," and, in the case supposed, a special return would seem to be more correct and appropriate than a double return (Cumm. 121 ; and see *Hackney*, 2 O'M. & H. 77).

Liability of
returning
officer on a
double
return.

No action at common law lies against a returning officer for making a double return, even with malice (*Bernardiston v. Some*, 2 Lev. 114), and the House does not seem ever to have even censured a returning officer for making a double return (see *Turistock*, 2 P. R. & D. 5 ; *Mallow*, P. & K. 266 ; *Tiverton*, *ib.* 269 ; *Flintshire*, 1 Peck. 526 ; and *Ipswich*, K. & O. 379). But if the

returning officer wilfully, falsely, and maliciously, make a double return, he is liable to be sued, within two years, for double damages and full costs (7 & 8 Will. III. c. 7, ss. 3, 2 ; and see further hereon, Election Agent, p. 477). This action will not, however, lie for a mere mistake in law, the returning officer must have acted wilfully, falsely, and maliciously ; and “ wilful ” means “ contrary to a man’s own conviction ” (*Drewe v. Coulton*, 1 East. 564, *in notâ*).

CHAP. IV.

A special return is permissible where every reasonable effort has been made to proceed in the election, and it has nevertheless been found impossible to complete the election (*Knaresborough*, 2 Peck. 383) ; as where the election machinery breaks down through the partial failure of a contractor employed by the returning officer (*Hackney*, 2 O’M. & H. 77). The facts should be circumstantially set forth (*Knaresborough*, *Hackney*, *ubi sup.*), and if the returning officer cannot show that the facts alleged are strictly true, he may, for making a special return, be committed to the custody of the sergeant-at-arms as being guilty of a breach of the privileges of the House (*Coventry*, 2 Peck. 330 ; *Leicester*, 18 Journ. 58).

SPECIAL
RETURN.

A false return is the return of a member contrary to the last determination of the House of Commons of the right of election in the constituency in question (7 & 8 Will. III. c. 7, s. 1), and, if wilfully made, the returning officer is liable to be sued, within two years, for double damages and full costs of suit by any person duly elected ; and the person procuring such a return is also liable to a heavy penalty (*ib.* ss. 2, 3, 4, 6 ; and see further hereon, Election Agent, p. 477) ; but no action lies at common law, and apart from the above statute, for a false return (*Prideaux v. Morrice*, 7 Mod. 14). In addition to the above liability, a returning officer has almost invariably been visited with punishment by the House for making a

FALSE
RETURN.

CHAP. IV. false return (Male, 230 ; *Liskeard*, 2 Peck. 333), except
 — where it was made by mere inadvertence, and it did not appear that the returning officer had acted from partiality (*Carnarvon*, C. & R. 127).

Error of
 addition or
 miscalcula-
 tion.

The adding together of tendered and admitted votes constitutes a false return (*Carnarvon*, C. & R. 127) ; and, even if it be not wilfully done, a returning officer who is guilty of such carelessness incurs a serious responsibility (*ib.* 138, *in notâ*). If from miscalculation of the numbers the wrong candidate is returned (see *Dublin*, 1 P. R. & D. 193), the return is false, and the numbers will be altered by striking off the votes erroneously added (*ib.* 205). A petition must, however, be filed to correct the error (*Renfrew*, 2 O'M. & H. 213 ; *Ashton-under-Lyne*, 1885), and the returning officer is not liable to the penalties for a false return in such a case, if he acted *bonâ fide* and to the best of his judgment (Cunn. 123).

NOTICE OF
 CANDI-
 DATES
 ELECTED.

— Having returned the writ of election, the returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and of the total number of votes given for each candidate, whether elected or not (B. A. r. 45), by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors (B. A. r. 46). If this notice is given by placards, handbills, or posters, they must bear upon their face the name and address of the printer and publisher, under a penalty of £100 (C. I. P. P. A. s. 18).

The following is a form of this notice :—

COUNTY [OR BOROUGH OR DIVISION] OF

CHAP. IV.

PARLIAMENTARY ELECTION,

189 .

Form.

I HEREBY GIVE NOTICE that the total number of votes given for each candidate at the above election is as follows:—

[Here set out the names of each candidate, whether elected or not, and the total number of votes against the name of each.]

ALSO, that the names of the candidates elected are:—

[Here set out the names of the candidates elected ONLY.]

Dated this day of 189 .

Y. Z.,

Sheriff [or Mayor] and Returning Officer.

Printed and Published by K. & Co. of .

This notice is entirely distinct from the declaration of the result of the poll (*ante*, p. 48), and cannot alter the effect of a numerical majority of votes given for any candidate (*Pritchard v. Bangor, Mayor, etc., of*, 13 App. Cas. 241).

The returning officer must forward to the clerk of the crown:—

REPORTS
ETC. TO THE
CLERK OF
THE
CROWN.
—

- (1.) The counted ballot papers, made up into one packet and sealed by him (B. A. rr. 38, 37);
- (2.) The rejected ballot papers, made up into one packet and sealed by him (*ib.*);
- (3.) The returning officer's report as to the rejected ballot papers (B. A. r. 36), and as to the result of his verification of the presiding officers' ballot paper accounts (*ib.* r. 37: see *ante*, p. 46), made up into one packet and sealed by the returning officer (*ib.* r. 38);
- (4.) The ballot paper accounts made by the several presiding officers (B. A. r. 30), made up into one packet and sealed by the returning officer (*ib.* r. 38);

CHAP. IV.

- (5.) The several packets of unused and spoiled ballot papers, sealed up by and received from the several presiding officers (B. A. r. 29), opened by the returning officer (*ib.* r. 37), and made up into one packet and sealed by the returning officer (*ib.* r. 38) ;
- (6.) The several packets of tendered ballot papers used, sealed up by, and received from, the several presiding officers (B. A. r. 29), and made up into one packet and sealed by the returning officer (*ib.* r. 38) ;
- (7.) The marked copies of the registers, and counterfoils of the ballot papers, and the chief constables' certificates (50 & 51 Vict. c. 9, s. 2, sub. 2), sealed up by, and received from the several presiding officers (B. A. r. 29), and made up into one packet and sealed by the returning officer (*ib.* r. 38) ;
- (8.) The tendered votes lists, the lists of votes marked by the several presiding officers, the statements of the numbers of voters whose votes are so marked, and the declarations of inability to read, sealed up by, and received from, the several presiding officers (B. A. r. 29), opened by the returning officer (*ib.* r. 37), and made up into one packet and sealed by the returning officer (*ib.* r. 38).

Indorse-
ments on
packets.

The returning officer shall indorse on each packet a description of its contents, the date of the election to which it relates, and the name of the county or borough for which the election was held (B. A. r. 38). The indorsement upon any packet of ballot papers produced by the clerk of the crown is evidence of the papers being what they are stated to be by the indorsement

(*ib.* r. 43). The returning officer shall, by himself or his agent, as soon as possible after declaring the result of the election, deliver the above packets to the clerk of the crown in chancery, or his deputy, or deliver the same, directed to the said clerk, to the postmaster or deputy-postmaster of the city, town, or place where the notice is given of the members elected, and such postmaster or deputy-postmaster, shall give an acknowledgment in writing of such receipt to the returning officer, and shall keep a duplicate of such acknowledgment, signed by the returning officer. And the returning officer is required, at the time of transmitting such packets as aforesaid through the post-office, to address and forward a letter by the same post to the said clerk of the crown, informing him of such transmission, and giving the number and description of such packets so transmitted (6 & 7 Vict. c. 18, s. 93; B. A. r. 38). The following is a form of this letter :—

Letter to
clerk of the
crown.

SIR,

I have the honour to inform you that by this post I have transmitted to you the following documents relating to the parliamentary election, held on the day of for the county [*or* division, *or* borough] of viz. :—

- (1.) One packet of counted ballot papers.
- (2.) One packet of rejected ballot papers.
- (3.) The returning officer's report as to the rejected ballot papers, and as to the result of his verification of the presiding officer's ballot paper accounts.
- (4.) One packet containing the ballot paper accounts, *
in number, made out by the presiding officers.
- (5.) One packet of unused and spoilt ballot papers.
- (6.) One packet containing the packets of tendered ballot papers used, * in number, sealed up by, and received from, the presiding officers.

* This number will be the same as the total number of the polling stations.

CHAP. IV.
—

- (7.) One packet containing the packets of marked copies of the registers and of the counterfoils of the ballot papers, * in number, sealed up by, and received from, the presiding officers.
- (8.) One packet containing the tendered votes list, the lists of votes marked by the presiding officers, the statements of the number of voters whose votes are so marked, and the declarations of inability to read.

Dated this day of 189 .

Y. Z.,

Sheriff [*or* Mayor] and Returning Officer.

To the Clerk of the Crown in Chancery.

These matters completed, the duties of the counting assistant and counting agent are at an end.

PART II.

MUNICIPAL ELECTIONS.

CHAPTER V.

DIFFERENCES BETWEEN MUNICIPAL AND PARLIAMENTARY ELECTIONS.

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AT a municipal election the poll shall, as far as circumstances admit, be conducted as a poll at a contested parliamentary election is, by the B. A., directed to be conducted, and, subject to the modifications expressed in M. C. A. sch. III. pt. III., and to the other provisions of the M. C. A., the provisions of the B. A. relating to a poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of town councillors (M. C. A. s. 58,

PROCEDURE AT
MUNICIPAL
ELECTIONS.

Application of
Act.

CHAP. V. sub. 1). These modifications and other provisions will
 — now be noticed.

THE THE mayor shall appoint officers for counting the
 COUNTING votes (M. C. A. sch. III. pt. III. r. 3), and these officers
 ASSISTANT. or counting assistants he selects and appoints in the
 — same manner as at a parliamentary election : but as the
 Parliamentary Elections (Returning Officers) Act, 1875,
 Number does not apply to a municipal election, the mayor is not
 and remu- limited by that Act as to the number of counting
 neration. assistants to be employed, or as to their remuneration, as
 is a returning officer at a parliamentary election.

THE The candidate's agents appointed to attend at the
 COUNTING counting of the votes, if employed for payment, must be
 AGENT. appointed by the candidate himself or by his agent there-
 — unto lawfully authorised (M. E. C. I. P. A. s. 13, sub. 1),
 Appoint- as there is no "election agent" at a municipal election.
 ment. Such agents must be chosen from among the persons
 who may legally be employed as clerks and messengers
 (see *ib.*) as the M. E. C. I. P. A. does not recognize the
 Number. paid counting agent as a distinct paid official, or in any
 way mention or allude to him. The number of clerks
 or messengers that may be employed of payment at a
 municipal election is two for a borough or ward, and if
 the number of electors in such borough or ward exceeds
 2000, one additional person for every thousand electors
 and incomplete part of a thousand electors over and
 above the said 2000 (M. E. C. I. P. A., s. 13, sub. 1 *a.*) :
 Thus, in a borough or ward of—

From	1 to 2000 electors,	two clerks and messengers	may be appointed
„	2001 to 3000	„ three „	„
„	3001 to 4000	„ four „	„
„	4001 to 5000	„ five „	„
„	5001 to 6000	„ six „	„

and so on, adding one more clerk or messenger for each additional one thousand, or incomplete part of one thousand, electors. CHAP. V.
—

The remuneration of a paid counting agent must be included in that given to him as clerk or messenger (see *ante*, p. 60). Remuneration.

A paid counting agent may not vote (M. E. C. I. P. A. s. 13, sub. 3); and if he does vote, he is guilty of an illegal practice (*ib.* s. 6, sub. 1). Cannot vote
if paid.

Where a borough has no wards, there shall be one election of councillors for the whole borough (M. C. A. s. 50, sub. 1); where a borough has wards, there shall be a separate election of councillors for each ward (*ib.* sub. 2). BOROUGH
AND WARD
ELECTIONS.
—

Every person entitled to vote may vote for any number of candidates, not exceeding the number of vacancies (M. C. A. s. 58, sub. 2). For how
many to
vote.

The provision as to the returning officer's casting vote is different from that prevailing at a parliamentary election, though the considerations of whether he should give such vote are the same (see *ante*, p. 44). CASTING
VOTE.
—

Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer or his deputy, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing (M. C. A. s. 58, sub. 5). He may therefore give a casting vote whether he is enrolled, or entitled to be enrolled, as a burgess or not; but if he give a casting vote when he is not entitled to do so, and when he knows he is not so entitled, he is guilty of an illegal practice (M. E. C. I. P. A. s. 6, sub. 1). How and
when
given.

The expenses incurred by the town clerk and other municipal authorities in relation to the holding of EXPENSES
OF
ELECTION.
—

CHAP. V. — municipal elections are charged upon the borough fund, but may not be paid without order of the town council (M. C. A. s. 140, subs. 1, 2 ; *ib.* sch. III. pt. III. r. 5 ; *ib.* sch. V. pt. II. r. 1).

REPORTS. — No return shall be made to the clerk of the crown in chancery (M. C. A. sch. III. pt. III. r. 6), but the report of the returning officer as to the verification of the ballot paper accounts, and as to the rejected ballot papers (see *ante*, p. 46), and the delivery or sending of the ballot papers and other documents, which in the case of a parliamentary election is made to the clerk of the crown in chancery (see *ante*, p. 55), shall be made to the town clerk (M. C. A. r. 64 *b.*).

Ballot
papers and
packets.

POSTERS.
—
Name and
address of
printer and
publisher.

Every bill, placard or poster having reference to a municipal election shall bear upon its face the name and address of the printer and publisher, under a penalty, if the offender be a candidate, of an illegal practice, and if he be not the candidate, of a fine not exceeding £100 (M. E. C. I. P. A. s. 14).

PART III.

COUNTY COUNCIL ELECTIONS.

CHAPTER VI.

DIFFERENCES BETWEEN COUNTY COUNCIL
AND MUNICIPAL ELECTIONS.

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<i>Number and remuneration</i>		<i>Reports, ballot papers,</i>	
<i>of counting assistants . . .</i>	64	<i>etc.</i>	„
RETURN TO CLERK OF THE		EXPENSES OF ELECTION . . .	„
COUNTY COUNCIL . . . „			

THE council of a county shall be elected in like manner as the council of a borough divided into wards, subject nevertheless to the provisions of the L. G. A. (L. G. A. s. 2, sub. 1). The M. C. A. is applied to the election of county councillors by L. G. A. s. 75, and the B. A. is applied to the M. C. A. by M. C. A. s. 58, sub. 1 (see *ex parte Walker*, 22 Q. B. D. 384). The divisions of the county shall be called electoral divisions and not wards (L. G. A. s. 2, sub. 2). A reference to the Acts applied by the L. G. A. to the returning officer or to the mayor shall be construed to refer to the returning officer or his deputy (L. G. A. s. 75, sub. 4); and a reference to the town clerk shall be construed to refer to the returning officer or his deputy, and as respects matters subsequent to the election, shall be construed to refer to the clerk of the county council (*ib.* sub. 5). But this substitution of the returning officer or his deputy for the town clerk

PROCE-
DURE AT
COUNTY
COUNCIL
ELECTIONS.

CHAP. VI. shall not extend to any election of county councillors
 — for any electoral division which is co-extensive with,
 or wholly comprised in, a municipal borough (54 & 55
 Vict. c. 68, s. 3).

The powers and duties of the counting assistant and
 counting agent, and the proceedings at a contested
 election of county councillors, are therefore similar to
 those at a municipal election, subject to the provisions
 above mentioned, and which will now be dealt with.

Number
 and remun-
 eration of
 counting
 assistants.

The scale of charges in sch. I. pt. I. of the Parlia-
 mentary Elections (Returning Officers) Act, 1875, applies
 to the election of county councillors, unless the county
 council have framed another scale of charges in lieu
 thereof (L. G. A. s. 75, sub. 18). The returning officer
 is therefore limited by that Act or scale as to the number
 of counting assistants he may appoint, and as to the
 remuneration he may give them for their services.

RETURN TO
 CLERK OF
 THE
 COUNTY
 COUNCIL.
 —

The returning officer shall forthwith after the election
 return the names of the persons elected to the clerk of
 the county council (L. G. A. s. 75, sub. 8). This return
 should be in the handwriting of, or signed by, the
 returning officer (see *Londonderry*, P. & K. 272 ;
Limerick, *ib.* 373), and may be in the following form :—

THE LOCAL GOVERNMENT ACT, 1888.

Election of county councillor for the electoral division
 of the county of , held on the day of
 189 .

I, the returning officer of the county of , do hereby
 certify and return that the names of the PERSONS ELECTED as
 county councillors for the said county are as follows :—

A. B. of in the county of .
 C. D. of in the county of .
 etc. etc.

Dated this day of 189 .

Y. Z.

Returning officer.

To the Clerk of the County Council of .

A borough returning officer returns the names of the persons elected to the county returning officer (54 & 55 Vict. c. 68, s. 3 *a*), and the latter returns the names to the clerk of the county council.

CHAP. VI.

—

If a person is elected in more than one electoral division, he shall, within three days after notice thereof, choose, by writing signed by him and delivered to the clerk of the county council, or in his default the returning officer shall, within three days after the time for choice has expired, declare for which of those divisions he shall serve, and the choice or declaration shall be conclusive (M. C. A. s. 68 ; L. G. A. s. 75, sub. 5). The three days are calculated exclusively of Sundays, etc. (M. C. A. s. 230, sub. 3). The returning officer's declaration should be in writing, and should be communicated to the person elected, and to the clerk of the county council.

Election
for more
than one
division.

The reports, ballot papers, and other documents, which in a parliamentary election are sent to the clerk of the crown in chancery (see *ante*, p. 55), and in a municipal election to the town clerk (see *ante*, p. 62), are in a county council election sent to the clerk of the county council (L. G. A. s. 75, sub. 5).

Reports,
ballot
papers, etc.

All costs properly incurred in relation to the holding of elections of councillors of county councils, so far as not otherwise provided for by law, shall be paid out of the county fund as general expenses (L. G. A. s. 75, sub. 17). The said costs shall not exceed those allowed by part I. of the First Schedule to the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act, 1885, or by such scale as the county council may from time to time frame (*ib.* s. 75, sub. 18). Unless and until any such scale is framed, the charges to be allowed are governed by the above statutes. The allowances under

EXPENSES
OF
ELECTION.
—

CHAP. VI

such statutes are maximum charges, but the charges to be made by the returning officer are in no case to exceed the sums actually and necessarily paid or payable (38 & 39 Vict. c. 84, note at the head of sch. I.). The object of the statute, and the allowances made in respect of the different items enumerated in the scale in the above named schedule, are fully considered in Election Agent, p. 288. Except so far as is permitted by the statute, a clerk to the county council or town clerk cannot charge for his personal services, loss of time, or expenses (see *Jones v. Carmarthen, Mayor of*, 8 M. & W. 605).

PART IV.

SCHOOL BOARD ELECTIONS.

CHAPTER VII.

DIFFERENCES BETWEEN SCHOOL BOARD
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<i>By whom and when count-</i>		PENALTY FOR OBSTRUCTING	
<i>ing takes place.</i> . .	68	THE ELECTION . . .	69
<i>Extra remuneration</i> . .	„		

IF at the election of a school board a poll become necessary, it shall, so far as circumstances admit, be conducted in like manner in which the poll at a contested municipal election is directed by the B. A. to be conducted ; and, subject to any exceptions or modifications contained in any order of the Education Department, made in pursuance of 36 & 37 Vict. c. 86, the B. A. shall apply in the case of the election of a school board in like manner as if the provisions thereof were enacted in 36 & 37 Vict. c. 86, with the substitution of “school board election” for municipal election (36 & 37 Vict. c. 86, sch. II., r. 1, *b*).

The powers and duties of the counting assistant and counting agent and the proceedings at a contested election of a school board are therefore similar to those at a

PROCEDURE AT
SCHOOL
BOARD
ELECTIONS

CHAP. VII. municipal election, subject to the exceptions and modifications now to be mentioned.

By whom and when counting takes place. The presiding officers and poll clerks are expected to act also at the counting of the votes. The counting of the votes need not take place the same evening if it cannot be completed before nine o'clock. If the counting cannot be completed the same evening, a sum not exceeding £1 will be allowed to any presiding officer so employed, and 15s. to each of his clerks (Circular letter of the Education Department, 17th June, 1886). No money for refreshments must be paid to any of the officers or clerks so employed (*ib.*).

Extra remuneration

Number of votes. Every voter shall be entitled to a number of votes equal to the number of the members of the school board to be elected, and may give all such votes to one candidate, or may distribute them among the candidates as he thinks fit (33 & 34 Vict. c. 75, ss. 29, 37, sub. 5). Thus, if there are twenty-one members to be elected, every voter is entitled to twenty-one votes, and may give the whole to one candidate, or seven each to any three candidates, or one to each candidate, or may distribute them among the candidates in any manner he thinks fit.

Votes, how given.

The voter may place against the name of any candidate for whom he votes the number of votes he gives to such candidate in lieu of a cross (Regulations as to First and Triennial Elections in Boroughs; also as to First and Triennial Elections in Parishes; all dated 25th May, 1886, r. 16, *b.*). The votes are thus cumulative, and it has been held that the guiding principle in considering any ballot paper is to see whether the voter has indicated, with sufficient clearness, for which candidates he intends to vote and how many votes he intends to give to each of them; that a single cross against the name of each of several candidates, indicates that the voter intended to give one vote to each such candidate; that where there

are more crosses than one against the name of a candidate, each cross means a vote ; that where it clearly appears that the voter's intention was or was not to exhaust all his votes, effect should be given to that intention, and that thus where a ballot paper was marked with crosses and a figure combined, which figures added up exhausted the whole number of the votes which the voter was entitled to give, the cross indicated that he voted for the person against whose name it was put, and the figures, the number of votes he gave to each ; and that where the figure 2 was placed between two crosses opposite the name of one candidate, and opposite the names of others were placed crosses which with these two made up the total number of votes the voter was entitled to give, it was clear that the figure 2 must be rejected and the votes counted by the crosses ; that strokes must be treated as votes ; that two strokes placed opposite the name of one candidate only indicated that the voter intended to give all his eleven votes to that candidate, *i.e.* that the two strokes were intended to signify the figure 11 and not to represent two votes only ; and that the question of whether a single cross or stroke meant that the voter intended to plump for the person against whose name the stroke was placed, or a single vote only, leaving the other votes undisposed of, or rendered the ballot paper void for uncertainty, is not a question of law but of fact (*Phillips v. Goff*, 17 Q. B. D. 805).

PENALTY
FOR OB-
STRUCTING
THE
ELECTION.

If any person by any contrivance attempt to obstruct or prevent the purposes of the election, or wilfully contravene any regulation made by the Education Department, the contravention of which is expressed to involve a penalty, such person shall, on summary conviction, be liable to a penalty of not more than £50, and in default of payment thereof, to be imprisoned for

CHAP. VII. not exceeding six months (33 & 34 Viet. c. 75, s. 90).
— And the orders of the Education Department with regard to the election of school boards in boroughs and parishes contain a clause that the provisions of B. A. ss. 3, 4, 11, 24, shall be deemed to be regulations contained in the order which involve a penalty within the meaning of this section.

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I.

COUNTY [OR BOROUGH OR DIVISION] OF

PARLIAMENTARY ELECTION,, 189 .

INSTRUCTIONS TO COUNTING ASSISTANTS.

RECORDING THE BALLOT PAPERS.

1. Sit in couples with an empty chair between you.
2. On receiving a ballot box and Form B., place the box on the chair between you.
3. Break the seal [or covering] over the keyhole, unlock and open the ballot box and take out, open, and count the ballot papers. Keep the ballot papers with their faces upwards, the numbers on the backs must not be inspected. Count the ballot papers in heaps of twenties, and range these heaps in rows of five each. Leave the ballot papers so counted and arranged on the table.
4. Record the total number of ballot papers in the box on Form B., and sign it. Raise your hand as a signal to the messenger, who will take Form B. for comparison with the ballot paper account.
5. If found correct, the messenger will return and take the ballot papers from you, and will give you another box, which proceed to deal with in like manner.
6. If found incorrect, the messenger will return with Form B., and you will then re-count the ballot papers, and correct Form B.,

Instruc-
tions to
Counting
Assistants.

APPENDIX. if necessary. If on a re-count the number previously recorded is verified, a note to that effect must be added to Form B. and signed. Then raise your hand for the messenger, who will then take the form and subsequently the ballot papers from you.

COUNTING THE VOTES.

7. On receiving from the messenger a number of ballot papers and Form C., count them, and record the number in the space left for that purpose at the foot of Form C.

8. Sort the ballot papers into [six] heaps, arranged as follow : *

1.	2.	3.	4.
A. & B.	B. & C.	A. & C.	D. & E.
5.		6.	
Single votes and ballot papers not included in the above combinations.		Doubtful Votes.	

9. The doubtful votes are :—

- (1.) Those without the official mark.
- (2.) Marked for more than [two] candidates.
- (3.) Containing any writing or mark other than the two crosses.
- (4.) Unmarked, or so marked that you cannot tell for whom the votes are given.
- (5.) Objected to by any of the candidate's agents.

10. Place the four heaps crosswise on the top of each other in the top left-hand corner of the table; heap No. 1 at the bottom, No. 2 crosswise upon it, and so with Nos. 3 & 4. Then :—

11. Take heap No. 5 and sort it into seven other heaps in the following order :—

1.	2.	3.	4.
A. & D.	A. & E.	B. & D.	B. & E.
5.	6.	7.	
C. & D.	C. & E.	Single votes.	

* The case here dealt with is that of five candidates for two vacancies, and the four first-named heaps are the combinations which are expected to be the most frequent. A. B. and C. are supposed to be of one side in politics; D. and E. of the other. In other cases, the arrangement must be altered as may be necessary.

12. Place the first six of these heaps crosswise on the top of each other as before. APPENDIX.

13. Take heap No. 7 (the single votes) and sort it into five different heaps, thus:—

1.	2.	3.	4.	5.
A.	B.	C.	D.	E.

14. Count the number of single votes for each candidate and record them separately in the blank squares on Form C.

15. Count and record the cross votes and the party combinations in like manner. (In counting the large heaps, count them in heaps of twenty each, and place these heaps in rows of five heaps in each row.)

16. Cast up each column in Form C. and sign it.

17. Raise your hand as a signal to the messenger, who will take the ballot papers and Form C. from you, and will then hand you another lot of ballot papers, which proceed to sort, count, and record in like manner.

GENERAL.

18. The candidates' counting agents are not to interfere with your duties, but you are to allow them to inspect any ballot paper they may desire to see, but not the numbers on the backs.

19. You are not to leave the table, except in a case of urgent necessity, and your companion must not proceed in your absence.

B.

COUNTY [OR BOROUGH OR DIVISION] OF .

PARLIAMENTARY ELECTION, , 189 .

Number of Ballot Box

Number of Ballot Papers found therein .

Counted by us,

} Counting Assistants.

C.

APPENDIX. COUNTY [OR BOROUGH OR DIVISION] OF _____ .

PARLIAMENTARY ELECTION, _____ , 189 .

No.

STATEMENT of Number of Ballot Papers received and counted, and of Number of Votes therein given for each Candidate.

	A.	B.	C.	D.	E.	Doubtful Votes.
A.		—	—	—	—	
B.	—		—	—	—	
C.	—	—		—	—	
D.	—	—	—		—	
E.	—	—	—	—		
A. AND B.			—	—	—	
A. AND C.		—		—	—	
A. AND D.		—	—		—	
A. AND E.		—	—	—		
B. AND C.	—			—	—	
B. AND D.	—		—		—	
B. AND E.	—		—	—		
C. AND D.	—	—			—	
C. AND E.	—	—		—		
D. AND E.	—	—	—			
TOTAL						

TABLE No.

Number of ballot papers received,

(Signed)

} Counting Assistants.

II.

APPENDIX.

[*Title as in No. 1, ante, p. 71.*]

ARRIVAL OF THE PRESIDING OFFICERS.

Instructions to
Chief
Counting
Assistant.

1. As each presiding officer arrives, the chief assistant will direct the ballot paper account (Packet No. 6), the packet containing the tendered votes list (Packet No. 5), and the packet of unused and spoilt ballot papers (Packet No. 2) to be separated from the other packets, and to be placed on the top of the ballot box to which they belong, and these packets and the ballot boxes he will retain under his own care. The others will be dealt with as follows :—

2. The following packets will be placed in the post-office mail-bags (No. 1) provided for the purpose, unopened and without breaking the seals :—

Packets No. 3.—The tendered ballot papers used.

„ „ 4.—The marked copies of the registers of voters and the counterfoils of the ballot papers used.

3. The following packets will be placed in the boxes provided for the purpose :—

Packets No. 7.—The appointment of the presiding officers, poll clerks, and candidates' polling agents.

Packets No. 8.—The unused forms, cards, paper and stationery, and the Pentateuchs and Testaments.

Packets No. 9.—The stamping instruments.

RECORDING THE BALLOT PAPERS.

4. When all the presiding officers and ballot boxes have arrived, the chief assistant will, by the messengers, send one ballot box with one Form B. to each pair of counting assistants, in order that they may count and record the number of ballot papers therein.

5. On receiving by the messengers from each pair of counting assistants Form B. duly filled up and signed by both assistants, the chief assistant will compare the number of ballot papers therein recorded with that appearing in the ballot paper account ; and, if they agree, he will direct the messenger to bring the ballot papers to the box appointed for mixing, and to take

APPENDIX. — another ballot box to the two counting assistants. If the number on Form B. does not agree with that on the ballot paper account, the chief assistant will return Form B. to the counting assistants. If on a re-count a discrepancy is found to exist, the chief assistant will make a memorandum to that effect on the back of the ballot paper account.

VERIFYING THE BALLOT PAPER ACCOUNT.

6. While the counting assistants are counting and recording the number of ballot papers in the ballot boxes, the chief assistant will open each Packet No 6 (the ballot paper account), also each Packet No. 2 (the unused and spoilt ballot papers), and also each Packet No. 5, from which last-named packet he will take the tendered votes list. He will then proceed to verify the ballot paper account by comparing it with the unused and spoilt ballot papers and the tendered votes list. He will fasten up and re-seal with the returning officer's seal each Packet Nos. 2 and 5, and will place same in the post-office mail-bags (No. 2), provided for the purpose.

7. When the ballot paper account has been thus fully verified as required by the last two articles (5 and 6) of these instructions, the chief assistant will sign it, will replace it in its packet, will re-seal such packet with the returning officer's seal, and will place it in the post-office mail-bags, No. 2.

MIXING THE BALLOT PAPERS.

8. The whole of the ballot papers coming from all the boxes will be mixed together in one box, and in so doing care must be taken to keep them with their faces upwards.

COUNTING THE VOTES.

9. The chief assistant will then select indiscriminately from the mixed heap a quantity of ballot papers, which he will send by the messengers with one of the Forms C. to each pair of counting assistants. No one but the returning officer or the chief assistant is to be allowed to take any ballot papers from the mixed heap.

10. The chief assistant will keep a register of the number of

Forms C. originally in his possession, and will number them consecutively. As each form or sheet is given out, he will record its number and the names of the assistants to whom it is given, and on its return he will mark it off in his register as returned. The greatest care must be taken that each form issued by the chief assistant is returned to him, and no second form must be issued to any pair of counting assistants until that already in their possession has been returned.

11. The chief assistant will see that the messengers place the counted ballot papers into a different box from that in which are placed the mixed and uncounted ballot papers.

12. As each Form C. is brought completed and signed to the chief assistant, he will transfer the several totals to the transfer sheets (Form D.). As each transfer sheet is filled up, he will cast and transfer the several totals appearing thereon to the final transfer sheet (Form E.).

DOUBTFUL VOTES.

13. The whole of the doubtful votes will be submitted, one by one, to the returning officer for his decision, who will hear any arguments that the candidates' agents have to submit.

14. The chief assistant will attend the returning officer upon his adjudication on the doubtful votes with one of the Forms C., and the Statement of Votes Rejected (Form F.). He will enter in Form C. each doubtful ballot paper allowed, by making a mark (the figure 1) in the appropriate blank space. He will similarly enter each rejected vote in the appropriate column of the Statement of Votes Rejected, (Form F.).

15. When the whole of the doubtful votes have been adjudicated upon, the chief assistant will cast up and sign his sheet C., and will get it checked and countersigned by some other assistant. He will then transfer the total of that sheet C. to the final transfer sheet, and will get the totals of each transfer sheet, and of the final transfer sheet, checked by some other assistant. These last-named totals will show the final result of the counting.

16. The counted and rejected ballot papers will then be made up into separate packets, sealed with the returning officer's seal, indorsed, and placed in one of the post-office mail-bags.

APPENDIX.

D.

COUNTY [OR BOROUGH OR DIVISION] OF .

PARLIAMENTARY ELECTION, , 189 .

TRANSFER SHEET, No. .

Table No.	Sheet No.	A.	B.	C.	D.	E.	

E.

COUNTY [OR BOROUGH OR DIVISION] OF .

PARLIAMENTARY ELECTION, , 189 .

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